

telecommunications services as contemplated by section 10(b). By allowing the petitioners to compete more effectively in the provision of the broadband transmission services that they currently offer, forbearance from dominant carrier regulation of these services will enhance competition among providers in a manner consistent with the public interest.¹⁷³

47. Our finding that public interest benefits will accrue from allowing the petitioners to provide non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services subject to the same regulations as their nondominant competitors also is consistent with the Commission's most recent report to Congress on the availability of advanced telecommunications capability under section 706 of the 1996 Act. In that report, the Commission determined that a diverse range of broadband technologies and facilities-based platforms that promote both price and quality-of-service competition will be available to consumers, and that the prospects of such competition "lend credence to calls for restrained regulation of advanced telecommunications technologies and advanced telecommunications providers."¹⁷⁴

48. We disagree with the commenters that urge that forbearing from the application of dominant carrier regulation to the petitioners' existing, non-TDM-based, packet-switched broadband services and existing, non-TDM-based, optical transmission services would be inconsistent with the public interest.¹⁷⁵ Forbearing from application of dominant carrier regulation will increase competition by freeing the petitioners from unnecessary regulation and will serve the public interest by promoting regulatory parity among providers of these services. In addition, the directives of section 706 of the 1996 Act require that we ensure that our broadband policies promote infrastructure investment, consistent with our other statutory obligations under the Act. As we found in the *Wireline Broadband Internet Access Services Order*, regulation that constrains incentives to invest in and deploy the infrastructure needed to deliver broadband services is not in the public interest.¹⁷⁶ By regulating the petitioners on the same terms as their nondominant competitors, we will encourage all potential investors in broadband network platforms, and not just a particular group of investors, to be able to make market-based, rather than regulatory-driven, investment and deployment decisions. This is particularly true for new technologies and services that provide voice, video, Internet access, and other broadband applications.

49. Consistent with our determinations under sections 10(a)(1) and 10(a)(2),¹⁷⁷ we find that extending our forbearance from dominant carrier regulation to services that the petitioners do not currently offer would be contrary to the public interest. Specifically, because the record before us is insufficient to support a finding that the petitioners will lack market power with regard to these as yet unoffered services, we cannot conclude that forbearance in this instance would be consistent with the public interest. We also believe that the public interest would be better served by our allowing carriers that are not before us to file their own forbearance petitions seeking relief from dominant carrier

¹⁷³ We recognize, of course, that theoretically forbearance from dominant carrier regulation for broadband telecommunications services other than those the petitioners currently offer or for incumbent LECs other than the petitioners also may advance purposes behind sections 7(a) and 706. In the event that the petitioners or other carriers request additional relief from dominant carrier regulation, we will evaluate on the record developed with regard to those requests whether grant of those requests would advance these purposes. However, for the reasons set forth in this Order, we cannot conclude on the record before us that additional forbearance here would meet the statutory forbearance criteria.

¹⁷⁴ *Availability of Advanced Telecommunications Capability in the United States*, GN Docket No. 04-54, Fourth Report to Congress, 19 FCC Rcd 20540 (2004).

¹⁷⁵ See, e.g., Broadview Comments at 34-35; EarthLink Comments at 20-21, COMPTel Comments at 19-21; Sprint Nextel at 16-19.

¹⁷⁶ *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14878, para. 45.

¹⁷⁷ See *supra* parts III.C.1.a & III.C.1.b.

regulation for specific broadband telecommunications services or seek regulatory relief through rulemaking proceedings or petitions to be declared nondominant, rather than extending our forbearance action to such carriers.

2. *Computer Inquiry Requirements*

50. As part of their requests for relief similar to that granted Verizon by operation of law, the petitioners seek forbearance from application of the *Computer Inquiry* requirements to their specified broadband services.¹⁷⁸

51. The *Computer Inquiry* rules require that the petitioners (a) offer as telecommunications services the basic transmission services underlying their enhanced services; (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including their own enhanced services operations;¹⁷⁹ and (c) offer those telecommunications services pursuant to tariff.¹⁸⁰ For ease of exposition, we refer to these requirements as the transmission access requirement, the nondiscrimination requirement, and the tariffing requirement, respectively. We conclude that forbearance is warranted with respect to the tariff requirement listed above, but not with respect to the transmission access requirement or the nondiscrimination requirement. Accordingly, the petitioners will be subject to the same *Computer Inquiry* requirements as their facilities-based, wireline competitors.

52. We find that forbearance from these three requirements satisfies sections 10(a)(1) and 10(a)(2). In particular, as found above, providers of these types of transmission services face significant competitive pressure from providers that can deploy their own facilities or rely on regulated special access inputs. We find that these competitive pressures are sufficient to ensure that the petitioners' rates and practices are just, reasonable, and not unjustly or unreasonably discriminatory and to protect consumers absent the *Computer Inquiry* requirements.

53. We conclude, however, that forbearance is not warranted with respect to the transmission access requirement or the nondiscrimination requirement because such forbearance would not be in the public interest pursuant to section 10(a)(3). These requirements apply to all non-BOC, facilities-based wireline carriers in their provision of enhanced services.¹⁸¹ Given this, we find that forbearance from the *Computer Inquiry* transmission access and nondiscrimination requirements is not in the public interest within the meaning of section 10(a)(3), as it would confer a regulatory advantage on the petitioners vis-à-vis their facilities-based competitors offering information services.

54. In contrast, the reasons that persuade us to forbear from dominant carrier regulation generally with regard to the petitioners' existing specified broadband services also persuade us to forbear from the *Computer Inquiry* tariffing requirement to the extent the petitioners provide information services in

¹⁷⁸ As discussed below, we grant forbearance from certain *Computer Inquiry* requirements that would apply to the enterprise broadband service solely by virtue of their use as the transmission component of an information service. As a practical matter, however, we note that the specified broadband services all appear to be transmission services that the petitioners choose to offer on a common carrier basis today, and thus remain subject to the same Title II regulation applicable to nondominant carriers.

¹⁷⁹ *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231; see *CCIA v. FCC*, 693 F.2d at 205.

¹⁸⁰ *Computer II Final Decision*, 77 FCC 2d at 475, para. 231. We note that, under the Commission's *Hyperion Forbearance Order*, which granted nondominant carriers permissive detariffing of interstate interexchange access services, non-incumbent LECs need not offer the basic transmission services underlying their enhanced services pursuant to tariff. See *Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Exchange Carriers*, CCB/CPD Nos. 96-3, 96-7, CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) (*Hyperion Forbearance Order*).

¹⁸¹ *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231.

conjunction with those broadband services.¹⁸² Therefore, like their non-incumbent LEC competitors, the petitioners will be free to offer any information service that incorporates one of more of their existing specified broadband services without, by virtue of such offering, being required to tariff that underlying telecommunications component of those services.¹⁸³

55. Our forbearance from the *Computer Inquiry* requirements does not extend to the petitioners' information services to the extent they incorporate telecommunications components other than their existing specified broadband services. As with our analysis of dominant carrier regulation of their broadband services,¹⁸⁴ we find that restricting our forbearance from *Computer Inquiry* obligations to services that incorporate these existing broadband telecommunications services is appropriate because we cannot conclude, on the record before us, that the petitioners will lack market power with regard to any as yet unoffered broadband telecommunications services. We also cannot find, on this record, that additional forbearance from the *Computer Inquiry* rules would meet the statutory forbearance criteria.

3. General Title II Economic Regulation

56. As part of their requests for similar relief to that granted to Verizon by operation of law, Embarq and Frontier seek forbearance from any economic regulation that would apply to them, under Title II and the Commission's implementing rules, in connection with their existing and future broadband services.¹⁸⁵ We first address this regulation as it applies to petitioners as common carriers or LECs. We then turn to this regulation as it applies to petitioners as incumbent LECs and independent incumbent LECs.

a. Regulation Applied to Common Carriers or LECs

57. Title II and the Commission's implementing rules impose economic regulation on common carriers or LECs generally regardless of whether they are incumbents or competing carriers. This regulation, though much less burdensome than the regulation imposed on dominant carriers, has been thought to provide important protections against unjust, unreasonable, and unjustly or unreasonably discriminatory treatment of consumers.¹⁸⁶ For example, section 201 of the Act mandates that all carriers engaged in the provision of interstate or foreign communication service provide such service upon

¹⁸² See *supra* part III.C.1.

¹⁸³ As a practical matter, however, we note that the existing specified broadband services all appear to be transmission services that the petitioners choose to offer on a common carrier basis today, and thus remain subject to the same Title II regulation applicable to nondominant carriers.

¹⁸⁴ See *supra* part III.C.1.

¹⁸⁵ See, e.g., Embarq Petition at 1 (seeking relief from those Title II common carriage requirements that apply to incumbent LEC broadband transmission services); Frontier Petition at 8 (requesting relief from the mandatory application of Title II requirements). In this part and in part III.C.4, *infra*, we use the terms "economic regulation" and "public policy regulation" as convenient shorthand to ensure that we address the full breadth of the petitioners' forbearance requests. In using these terms, we recognize that they have no well-established, specific meanings. Cf. *AT&T Inc. v. FCC*, 452 F.3d 830 (D.C. Cir. 2006) (*AT&T v. FCC*) (directing that the Commission reconcile its holding that a request for forbearance from "only 'common carrier' and 'economic' regulation under Title II" was insufficiently specific to identify the regulations from which forbearance was sought with the Commission's use of these terms in other proceedings). Our use of these terms here does not in any way prejudice our actions on remand of *AT&T v. FCC*.

¹⁸⁶ See *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16865-72, paras. 15-31 (1998) (*PCIA Forbearance Order*) (denying PCIA's request for forbearance from sections 201 and 202 of the Act and noting that these provisions "codify[] the bedrock consumer protection obligations of a common carrier. . ."); Time Warner Telecom Comments at 26.

reasonable request, and that all charges, practices, classifications, and regulations for such service be just and reasonable.¹⁸⁷ Section 202 of the Act makes it unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, or to make or give any undue or unreasonable preference or advantage to any person or class of persons.¹⁸⁸

All telecommunications carriers are obligated under section 251(a)(1) of the Act to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."¹⁸⁹ Section 251(b), moreover, imposes a number of duties on LECs, including the duty not to impose unreasonable or discriminatory conditions or limitations on resale of their telecommunications services,¹⁹⁰ the duty to implement number portability,¹⁹¹ and the duty to provide competing telecommunications service providers with access to the LECs' poles, ducts, and conduits under just and reasonable rates, terms, and conditions.¹⁹²

58. With respect to nondominant carriers, the Commission has relaxed tariffing, transfer of control, and discontinuance regulation for carriers that lack market power, although, as discussed above, these carriers are still subject to limited regulation in these areas.¹⁹³ In particular, section 214 of the Act requires common carriers to obtain Commission authorization before constructing, acquiring, operating or engaging in transmission over lines of communications, or discontinuing, reducing or impairing telecommunications service to a community.¹⁹⁴ The Commission's discontinuance rules for nondominant carriers require such carriers to file applications with the Commission and provide notice to the affected customers.¹⁹⁵ These applications are automatically granted on the 31st day unless the Commission notifies the applicant otherwise.¹⁹⁶ Moreover, to the extent they are permitted to file interstate tariffs, nondominant carriers must comply with the streamlined tariffing and notice requirements of part 61, subpart C of the Commission's rules.¹⁹⁷

59. We conclude that the record does not demonstrate that forbearance from these, and other, economic regulations that apply generally to nondominant telecommunications carriers and to LECs would meet the statutory forbearance criteria. Indeed, the petitioners ask us to go beyond the relief the

¹⁸⁷ 47 U.S.C. § 201.

¹⁸⁸ 47 U.S.C. § 202.

¹⁸⁹ 47 U.S.C. § 251(a)(1).

¹⁹⁰ E.g., 47 U.S.C. § 251(b)(1).

¹⁹¹ 47 U.S.C. § 251(b)(2).

¹⁹² E.g., 47 U.S.C. §§ 224, 251(b)(4).

¹⁹³ See *supra* para. 3.

¹⁹⁴ 47 U.S.C. § 214; see, e.g., *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (applying five factors to determine whether "reasonable substitutes are available" to consumers). In 1999, the Commission granted all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372, para. 12 (1999); 47 C.F.R. § 63.01(a). We also note that, in certain instances, the Commission has granted conditional blanket discontinuance authority to carriers under section 214. See *Wireline Broadband Access Services Order*, 20 FCC Rcd at 14907-08, paras. 100-01.

¹⁹⁵ 47 C.F.R. § 63.71(c).

¹⁹⁶ *Id.*

¹⁹⁷ See 47 C.F.R. §§ 61.18 *et seq.*

Commission has granted any competitive LEC or nondominant interexchange carrier and allow them to offer certain broadband telecommunications services free of Title II regulation, thus creating a disparity in regulatory treatment between the petitioners and their competitors.¹⁹⁸ We find, based on the record before us, that granting the petitioners such preferential treatment would be inconsistent with the market-opening policies and consumer protection goals that led Congress and the Commission to impose these economic regulations on carriers that lack individual market power.¹⁹⁹ For example, the protections provided by sections 201 and 202(a), coupled with our ability to enforce those provisions in a complaint proceeding pursuant to section 208, provide essential safeguards that ensure that relieving the petitioners of tariffing obligations in relation to their specified broadband services will not result in unjust, unreasonable, or unreasonably discriminatory rates, terms, and conditions in connection with those services.²⁰⁰ Accordingly, we cannot find that enforcement of these statutory and regulatory requirements is not necessary to ensure that the “charges, practices, classifications, or regulations . . . for[] or in connection with [the petitioner-specified broadband services] are just and reasonable and are not unjustly or unreasonably discriminatory” within the meaning of section 10(a)(1).²⁰¹

60. The petitioners also have not shown how continued enforcement of these economic regulation requirements in connection with their specified broadband services is not necessary for the protection of consumers within the meaning of section 10(a)(2) or how forbearance is consistent with the public interest within the meaning of section 10(a)(3).²⁰² On the contrary, disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.²⁰³ In particular, many of the obligations that Title II imposes on carriers or LECs generally, including interconnection obligations under section 251(a)(1) and pole attachment obligations under sections 224 and 251(b)(4), foster the open and interconnected nature of our communications system, and thus promote competitive market conditions within the meaning of section 10(b). Allowing the petitioners, but not their competitors, to avoid these obligations would undermine, rather than promote, competition among telecommunications services providers within the meaning of that provision. Moreover, in originally subjecting nondominant carriers to streamlined discontinuance, transfer of control, and tariffing requirements, the Commission necessarily determined that these requirements were needed to protect the public interest and competitive markets in situations where a carrier lacks market power.²⁰⁴ Granting the petitioners, but not their competitors, forbearance from these

¹⁹⁸ See, e.g., Frontier Petition at 6 (arguing that Frontier should receive the flexibility that its competitors currently enjoy in participating in and competing in the broadband market); see also Legacy SBC Reply, CC Docket No. 01-337, at 3-4 (characterizing as “indefensible” regulatory disparities between incumbent LECs and nondominant interexchange carriers); see also *Applications for License and Authority to Operate in the 2155-2175 MHz Band*, WT Docket No. 07-16; *Petitions for Forbearance under 47 U.S.C. § 160*, WT Docket No. 07-30, Order, FCC 07-161, para. 9 (rel. Aug. 31, 2007) (denying a forbearance request because the petitioners failed to demonstrate that a forbearance action was in the public interest).

¹⁹⁹ Cf. Time Warner Telecom Comments at 26 (contending that the petitioners have provided no basis for relief from Title II regulation that applies to both dominant and nondominant carriers).

²⁰⁰ See, e.g., *SBC Advanced Services Forbearance Order*, 17 FCC Rcd at 27010, 27012, paras. 18, 21 (citing 47 U.S.C. §§ 201-02, 208); *PCIA Forbearance Order*, 13 FCC Rcd at 16865-72, paras. 15-31; see also COMPTTEL Comments at 18 (arguing that forbearance from sections 201 and 202 would significantly undermine competition); Sprint Nextel Reply at 8 (maintaining that forbearance from sections 201 and 202 would effectively gut the core of the Communications Act); Time Warner Telecom Comments at 26-27.

²⁰¹ 47 U.S.C. § 160(a)(1).

²⁰² 47 U.S.C. § 160(a)(2), (a)(3).

²⁰³ *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that supports competing services).

²⁰⁴ See, e.g., *Interexchange Forbearance Order*, 11 FCC Rcd at 20776-77, paras. 84-85.

and the other obligations that apply generally to common carriers, LECs, or nondominant carriers would result in disparate regulatory treatment for the same or similar services, create market distortions, and fail to protect consumers within the meaning of section 10(a)(2).²⁰⁵ Accordingly, we deny the petitioners' forbearance requests to the extent they seek forbearance from Title II economic obligations, including those discussed above, that apply generally to telecommunications carriers or LECs.

b. Regulation Applied to Incumbent LECs

61. Title II and the Commission's implementing rules also impose regulation on the petitioners in their capacity as independent incumbent LECs. For example, section 251(c) of the Act imposes interconnection, unbundling, and resale obligations on the petitioners as incumbent LECs.²⁰⁶

62. We conclude that the record before us does not show that forbearance from these and other economic regulations that apply generally to incumbent LECs would meet the statutory forbearance criteria. Indeed the record contains no specific information regarding whether application of these regulatory requirements is not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the petitioner-specified broadband services'] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1).²⁰⁷ Nor does the record suggest how continued enforcement of these requirements in connection with the petitioner-specified broadband services is not necessary for the protection of consumers or inconsistent with the public interest. We therefore deny Embarq's and Frontier's forbearance requests to the extent they seek forbearance from Title II economic obligations, including those discussed above, that apply generally to incumbent LECs.

4. Public Policy Regulation

63. As part of their requests for similar relief to that granted to Verizon by operation of law, the petitioners seek forbearance from any public policy regulation that would apply to them, under Title II and the Commission's implementing rules, in connection with their existing and future broadband services offerings.²⁰⁸ We now turn to these requests.

64. Title II and the Commission's implementing rules set forth numerous public policy requirements that apply generally to all carriers, regardless of whether they are incumbents or competing carriers. These requirements advance critically important national objectives, such as ensuring the sufficiency of universal service support mechanisms, promoting access to telecommunications services by individuals with disabilities, protecting customer privacy, and increasing the effectiveness of emergency services, among other objectives. For example, section 254(b) of the Act states that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."²⁰⁹ Section 254(d) of the Act states that "[e]very telecommunications carrier that provides

²⁰⁵ 47 U.S.C. § 160(a)(2).

²⁰⁶ See COMPTTEL Comments, Attach. at 17 (arguing that the section 251 requirements are necessary to ensure that "wholesale charges, practices, classifications and regulations for broadband services are just reasonable and not unjustly or unreasonably discriminatory"); Sprint Nextel Reply at 10 (arguing that "forbearance also could lift the symmetrical interconnection obligations of sections 251 and 252").

²⁰⁷ 47 U.S.C. § 160(a)(1).

²⁰⁸ See Frontier Petition at 8 (seeking relief from application of Title II regulations excluding its obligations to make universal service contributions); Embarq Petition at 2 (seeking relief from Title II obligations except with respect to universal service and CALEA).

²⁰⁹ 47 U.S.C. § 254(b)(5). The Commission has emphasized that maintaining the long-term viability of universal service programs is a fundamental goal that must continue to be met in an evolving telecommunications marketplace in which customers are migrating to broadband service platforms. *Federal-State Joint Board on Universal Service*, (continued....)

interstate telecommunications services shall contribute" to universal service.²¹⁰ These universal service provisions ensure that all Americans, including consumers living in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers, have access to affordable telecommunications services.²¹¹

65. Similarly, Congress enacted section 225 of the Act to require each common carrier offering voice telephone service to also provide telecommunications relay service (TRS) so that individuals with disabilities will have equal access to the carrier's telecommunications network.²¹² Moreover, section 255 sets forth disability access network requirements, and 251(a)(2) prohibits telecommunications carriers from installing any "network features, functions, or capabilities" that do not comply with the disability access requirements in section 255.²¹³ With regard to customer privacy, certain provisions in section 222 of the Act restrict telecommunications carriers' use and disclosure of CPNI.²¹⁴ In these provisions, Congress recognized that telecommunications carriers are in a unique position to collect sensitive personal information and that consumers maintain an important privacy interest in protecting this information from disclosure and dissemination.²¹⁵ Other section 222 provisions increase the effectiveness of emergency services by facilitating the provision of vital caller location and subscriber identification information to emergency service providers.²¹⁶ We note that the petitioners' obligations under the Communications Assistance for Law Enforcement Act (CALEA) are governed by the CALEA statute,²¹⁷ and the petitioners remain obligated to comply with those statutory requirements.

66. We find that Embarq and Frontier have not shown that forbearance from these and the other public policy requirements in Title II and the Commission's implementing rules meets the statutory forbearance criteria.²¹⁸ Indeed, with regard to universal service, the petitioners disavow any intent to seek

(Continued from previous page)

CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24954-56, paras. 1-5 (2002) (*Universal Service Contribution Methodology NPRM*).

²¹⁰ 47 U.S.C. § 254(d).

²¹¹ See generally 47 U.S.C. § 254.

²¹² 47 U.S.C. § 225. TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, para. 2 (2000) (*Improved TRS Order & FNPRM*).

²¹³ 47 U.S.C. §§ 251(a)(2), 255.

²¹⁴ 47 U.S.C. § 222(a)-(c), (f). CPNI is defined to include "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." 47 U.S.C. § 222(h)(1).

²¹⁵ See generally 47 U.S.C. § 222.

²¹⁶ 47 U.S.C. § 222(d)(4), (g).

²¹⁷ 47 U.S.C. § 229; see also Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

²¹⁸ See, e.g., AdHoc Reply at i-ii (pointing out that the petitioners have failed to address or justify forbearance from Title II provisions that serve public policy goals, such as privacy and disability access, that are unrelated to marketplace competition).

relief from universal service contribution obligations.²¹⁹ We believe that by excluding this relief from their forbearance requests, the petitioners recognized that the public interest requires them to maintain their universal service support obligations. Nevertheless, we include those obligations in our forbearance analysis to ensure that there is no ambiguity with regard to the petitioners' continuing duty to include revenues from each of their specified broadband services in their federal universal service contribution calculations.

67. In particular, we conclude on the record before us that forbearing from the public policy requirements in Title II and the Commission's implementing rules would be inconsistent with the critical national goals that led to the adoption of these requirements. We therefore cannot find that enforcement of those requirements is unnecessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the petitioner-specified services] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1) of the Act,²²⁰ or is not necessary for the protection of consumers within the meaning of section 10(a)(2) of the Act.²²¹ On the contrary, we believe that consumers will continue to receive essential protections from the continued application of these requirements in connection with the petitioner-specified services.

IV. EFFECTIVE DATES

68. Consistent with section 10 of the Act and our rules, the Commission's forbearance decisions with regard to Embarq Local Operating Companies and the Frontier and Citizens Incumbent Local Exchange Telephone Carriers shall be effective on October 24, 2007.²²² The time for appeal shall run from the release date of the Order.²²³

V. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, Petitions for Forbearance filed by Embarq Local Operating Companies and the Frontier and Citizens Incumbent Local Exchange Telephone Carriers, ARE GRANTED to the extent described herein and otherwise ARE DENIED.

70. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this Order SHALL BE EFFECTIVE with regard to Embarq Local Operating Companies and

²¹⁹ Frontier Petition at 8; Embarq Petition at 2. See generally 47 U.S.C. § 254.

²²⁰ 47 U.S.C. § 160(a)(1).

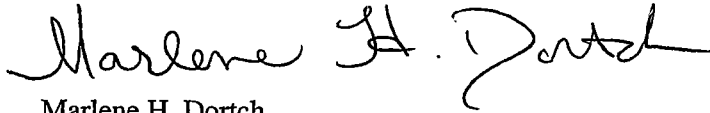
²²¹ 47 U.S.C. § 160(a)(2).

²²² See 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a).

²²³ See 47 C.F.R. §§ 1.4, 1.13.

the Frontier and Citizens Incumbent Local Exchange Telephone Carriers on October 24, 2007. Pursuant to section 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal of the Commission's actions with regard to these carriers shall run from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Marlene H. Dortch".

Marlene H. Dortch
Secretary

APPENDIX
PETITIONS FOR FORBEARANCE
 WC Docket No. 06-147

Petition	Abbreviation
Embarq Local Operating Companies	Embarq
The Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers	Frontier

COMMENTERS

Comments	Abbreviation
ACS of Anchorage, Inc.	ACS
Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Xspedius Management Company	Broadview
Cincinnati Bell Telephone Company LLC	Cincinnati Bell
COMPTEL	COMPTEL
Embarq Local Operating Companies	Embarq
Iowa Telecommunications Services, Inc.	Iowa Telecom
New Jersey Division of the Rate Counsel	New Jersey Rate Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom, Inc., Cbeyond Communications, LLC, One Communications Corp.	Time Warner Telecom

REPLY COMMENTERS

Reply Comments	Abbreviation
AdHoc Telecommunications Users Committee	AdHoc
AT&T Inc.	AT&T
BellSouth Corporation	Legacy BellSouth
Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Xspedius Management Company	Broadview
California Public Utilities Commission	California Commission
COMPTEL	COMPTEL
Embarq Local Operating Companies	Embarq
The Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers	Frontier
General Communications, Inc.	GCI
Hawaiian Telcom, Inc.	Hawaiian Telcom
Mobile Satellite Ventures Subsidiary LLC	Mobile Satellite Venture
MontanaSky.Net	MontanaSky.Net
National Telecommunications Cooperative Association	NTCA

Qwest Corporation, Qwest Communications Corporation	Qwest
Sprint Nextel Corporation	Sprint Nextel
T-Mobile USA, Inc.	T-Mobile
The Verizon Companies	Verizon

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 06-147

Broadband access is essential to an expanding Internet-based information economy. Promoting broadband deployment is one of the highest priorities of the FCC. To accomplish this goal, the Commission seeks to establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers. Today, we take another step in establishing a regulatory environment that encourages such investments and innovation by granting Embarq's and Citizens and Frontier's petitions for regulatory relief of their broadband infrastructure and fiber capabilities. This relief will enable Embarq, Citizens and Frontier to have the flexibility to further deploy their broadband services and fiber facilities without overly burdensome regulations.

The relief afforded to Embarq, Citizens and Frontier is consistent with and similar to the relief provided in Commission decisions regarding broadband services, packet switching, and fiber facilities. In those decisions, the Commission determined to relax regulations where competition was significant and where regulations acted as a disincentive to deploy new broadband technologies. Accordingly, based on the specific market facts that have been placed before us, we are compelled under the "pro-competitive, deregulatory" framework established by Congress, as well as under section 10's forbearance criteria, to grant Embarq, Citizens and Frontier relief from the continued application of legacy regulations.

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN S. ADELSTEIN,
DISSENTING**

Re: *In the Matters of Petition of the Embarras Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services; WC Docket No. 06-147; Memorandum Opinion and Order (October 24, 2007)*

This Order addresses two more in the queue of far-reaching forbearance requests for exemption from Title II and *Computer Inquiry* obligations for self-styled "broadband enterprise services." Much as we found the evidence to support forbearance in the previous cases altogether underwhelming,¹ we also find that this Order fails to meet the standards set out by Congress in Section 10 of the Act.

The Commission's unwillingness to engage in a serious examination of the facts is particularly disappointing here, because it appears that these petitioners may be able to present a distinctly different portrait of competitive conditions in their markets. In this case, the Commission's failure to insist that parties be explicit in their requests or detailed in the data they provide has certainly not helped the petitioners make their case. Moreover, this Order makes no attempt to grapple with the limited local market data filed in this proceeding.

As we have said before, these kinds of decisions are too important to be made without the in-depth market analysis that might support them. We also are mindful of ongoing Congressional concerns with policymaking on forbearance petitions based upon inadequate analysis and data. The lack of data concerning the specific product and geographic markets at issue and this Order's lack of analysis continues to cause us great concern with both the substance and the process of granting these and similar forbearance petitions.

For these reasons, we dissent from today's Order.

¹ See Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; WC Docket No. 06-125, Memorandum Opinion and Order (October 11, 2007).*